BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C.

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	

Comments of the Public Service
Commission of the State of Missouri

The Public Service Commission of the State of Missouri ("MoPSC") offers the following comments in response to the Federal Communication Commission's ("Commission") Notice of Proposed Rulemaking (NPRM) released in the above docketed case on June 8, 2004. Through the NPRM, the Commission seeks comment on the *Recommended Decision* of the Federal-State Joint Board on Universal Service (Joint Board) concerning the process for designation of eligible telecommunications carriers (ETCs) and the Commission's rules regarding high-cost universal service support.[1]

I. Joint Board recommendation that the Commission adopt permissive federal guidelines for states to consider in proceedings to designate ETCs under section 214 of the Communications Act of 1934, as amended (Act).

Many of the issues and questions presented for comment in this section of the NPRM are related to issues currently pending before the MoPSC. Therefore, the MoPSC declines to specifically address the specific questions outlined in the NPRM and offers general observances for the Commission's consideration without taking a position as to their relevance to pending Missouri cases. In the MoPSC's opinion, the current eligibility requirements specified in section 214(e)(1) of the Act are vague and provide little guidance to state commissions. The MoPSC

[1] *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, 19 FCC Rcd 4257 (2004) (*Recommended Decision*).

supports the review and adoption of federal guidelines that provide additional direction to states when considering ETC designation requests.

II. Annual certifications and submission of data by competitive ETCs seeking high-cost support.

The Joint Board recommended that the Commission encourage states to use the annual certification process for all ETCs to ensure that federal universal service support is used to provide the supported services. The MoPSC, over the past few years, has continued to review the annual certification process for both incumbent and competitive carriers. In Case No. TO-2002-347, a state working group developed a proposal by which carriers would submit certain documentation to the MoPSC staff for review in recommending the MoPSC certify a carrier for receipt of federal universal service funds. This proposal, and the MoPSC order approving this proposal, are appended as Attachment A. Subsequently, this proposal was reviewed and modified. Beginning with the 2004 annual certification, a new process was developed as described in Attachment B. Under the new proposal, prior to August 15 of each year, incumbent carriers will complete and submit to MoPSC staff, Attachment C and competitive ETCs will complete and submit to MoPSC staff, Attachment D. Attachments C and D will be reviewed by MoPSC staff to "test" the use of the funds and periodic audits will be performed on the companies.

III. Joint Board recommendation to limit the scope of high-cost support to a single connection.

The MoPSC agrees with the Joint Board's recommendation that the Commission limit the scope of high-cost support to a single connection providing access to the public telephone network. As the Joint Board noted, continued support for multiple connections to multiple networks in rural and high-cost areas potentially threatens the sustainability of the universal service fund. Currently, the support to a high-cost area increases proportionately to the number of connections served by a competitor when that competitor is granted ETC designation. As the competitor "wins" customers from the incumbent, that "win" may not have a major impact on the fund since support could be properly transferred from the incumbent to the competitor. However, it is possible under the status quo for a household or place of business to have both a supported wireline telephone line and a supported wireless telephone line, as well as, multiple supported wireline or wireless telephone lines assuming that all carriers are designated as ETCs (although this situation could not occur at this time in Missouri since no wireless carriers have been granted ETC status). As a point of comparison, ILECs have approximately 600,000 rural USF access lines in Missouri. Of the total rural USF access lines, ILECs estimate that approximately 46,000 lines are secondary residential lines.

Limiting support to a single connection will continue to ensure access to all of the services included in the definition of universal service under section 254(c), because each ETC is required to provide all of the supported services. However, the MoPSC suggests that implementing support for a single connection presents significant administrative challenges in order to properly designate which connection to the network is the "primary" line where multiple connections, carriers, and/or connective technologies exist. The MoPSC encourages the Commission to issue a further NPRM to determine feasibility of gathering proprietary data from carriers in high cost areas as well as determining USAC's ability to effectively monitor and administer such a process.

The Joint Board recommendation suggests that customers self-designate which line they consider their primary line. The MoPSC suggests that if customers are allowed to designate which line is the primary line, customers could be offered special rates or non-regulated discounts as incentives to designate a particular line as the primary line (even if that line does not meet the criteria to be considered a primary line). Also, in a case where one corporate parent is providing both a wireless and wireline telephone line to a customer, that corporate parent could have the incentive to attempt to convince the customer to designate the line that would lead to the company receiving the most support regardless of which line the customer uses as primary. Such scenarios, even when separate affiliates under a common corporate parent are involved, could result in carriers using a portion of their universal service funding to compete for more funding. Clearly this is contrary to the goals of universal service support as outlined in the Act. The MoPSC encourages the Commission to ensure that any changes made to existing USF rules are competitively neutral and any support is completely portable to any other eligible ETC.

A. Joint Board's Funding Proposals

The Commission asked for comment on the Joint Board's funding proposals. The MoPSC has reviewed these proposals and offers the following comments on each proposal. As previously stated, the MoPSC agrees with the Joint Board's recommendation that the Commission limit the scope of high cost support to a single connection providing access to the public telephone network. However, before implementing any specific proposal, the MoPSC recommends the Commission develop a clear procedure for designating a "primary" line. In other words, the following proposals can only be reviewed once the clear procedure for designating the "primary" line has been established, therefore, MoPSC does not offer definitive support for any proposal, but offers a few concerns on the Lump Sum and "Hold Harmless" proposals.

i. Lump Sum Payment Proposal

The Joint Board offers the lump sum payment proposal as an alternative. The Joint Board notes the Commission could provide supplemental lump sum payments to avoid any immediate effects on rural carriers as a result of limiting the scope of support. Under this approach, a rural carrier would receive the same amount of high-cost support on a per-line basis as it did previously, but would receive such support only for primary lines. The rural carrier also would receive a lump sum payment to compensate for the loss of support associated with existing second lines. Thus, this interim lump sum proposal would prevent support reductions in rural areas based on the termination of support for second lines; high-cost support would be reduced only with the future loss of primary lines *to competitors*.

As the NPRM states, the lump sum payment alternative would not increase the amount of per-line support for incumbent carriers, and thus would not encourage competitive carriers to seek ETC status merely for arbitrage purposes. On the other hand, as the Commission recognizes, making lump-sum payments available to incumbents, but not to competitive ETCs, could be inconsistent with the principle of competitive neutrality. The MoPSC shares the concerns about the competitive neutrality of this proposal. A lump sum payment as discussed would not be portable to an ETC, even if the ILEC is replaced as the carrier of last resort. Such a proposal seems contrary to the spirit of a portable support mechanism, where the carrier serving a current customer receives support for the costs of serving that customer assuming the carrier is an eligible ETC.

ii. "Hold Harmless" Proposal

Finally, the Joint Board offered an alternative designed to maintain support for rural areas that does not encourage competitive carriers to seek ETC status merely for arbitrage purposes. Under the "hold harmless" proposal, the per line support available to competitive ETCs would be frozen upon competitive entry. Competitive ETCs would only be able to obtain USF support for customers who designated this line as the primary line. The MoPSC has several concerns with the "hold harmless" approach. This approach assumes that competitors will never further invest in additional facilities needed to serve more customers than they have at the time of their ETC application. Furthermore, this proposal does not take into consideration the possibility that an ILEC may be replaced as the carrier of last resort.

IV. Summary

In summary, while not commenting on the specifics of the ETC designation process, the MoPSC supports review and adoption of federal guidelines that provide additional direction to states when considering ETC designation requests. In response to the recommendation by the Joint Board that the Commission encourage state commissions to use the annual certification process for all ETCs, the MoPSC attaches for Commission review, non carrier-specific copies of its previous annual certification process and non-carrier specific copies of its 2004 annual certification process. These generic processes are applicable to all eligible ETCs. Finally, the MoPSC supports the Joint Board recommendation to limit high cost support to a primary line. This modification is an important step toward ensuring the continued sustainability of the federal universal service fund. However, the MoPSC suggests the Commission issue a FNPRM asking specific questions of incumbents, competitors and USAC to determine what sort of proprietary network information is available in terms of the number of households served by each carrier. The Commission should also ascertain how voluminous such data might be, and inquire as to USAC's ability to collect and manipulate such data. If further input is not sought on these issues, the Commission should be very clear in its rules that carriers are not permitted to use the primary line certification from their customers as a means of obtaining or retaining that customer. Such actions are clearly counterproductive, threaten the goals of universal service funding and need to be discouraged.

Respectfully submitted,

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